

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Luke Petrinovic	Team: Team # 1	CCRB Case #: 201208942	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 07/01/2012 1:00 AM	Location of Incident: West 186th Street and Audubon Avenue	Precinct: 34	18 Mo. SOL 1/1/2014	EO SOL 1/1/2014	
Date/Time CV Reported Thu, 07/12/2012 3:18 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Thu, 07/12/2012 3:18 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Howard Zweben	03711	933512	PBMN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Lance Saraceno	12845	951212	PBMN
2. SGT Steven Silverstein	05164	931222	PBMN
3. POM James Burpoe	13067	950132	PBMN

Officer(s)	Allegation	Investigator Recommendation
A.SGT Howard Zweben	Discourtesy: SGT Howard Zweben spoke discourteously to § 87(2)(b)	

Case Summary

On July 12, 2012, § 87(2)(b) filed this complaint in person at the CCRB (encl. B 1-2).

On July 1, 2012, at 1:00 am, § 87(2)(b) was arrested at the corner of West 186th Street and Audubon Avenue, in Manhattan, by SGT Howard Zweben, PO James Burpoe, PO Lance Saraceno, and SGT Steven Silverstein, of Partol Borough Manhattan North. During the arrest, the following misconduct is alleged to have occurred:

- **Allegation A – Discourtesy: SGT Zweben spoke discourteously to** § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) was offered mediation as a means of addressing this complaint during his interview on July 12, 2012, and he rejected.

Results of Investigation

Civilian Statement(s)

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)

CCRB Statement:

On July 12, 2012, § 87(2)(b) was interviewed by the CCRB, as a walk-in (encl. B 3-6). § 87(2)(b) also described the incident in a Notice of Claim, which he filed with the City on § 87(2)(b) (encl. E 5-8). These statements are generally consistent with the exceptions and additions noted in the summary below:

On July 1, 2012, at 12:48am, § 87(2)(b) came out of his apartment and walked down to the corner of West 186th Street and Audubon Avenue in Manhattan. At roughly 1:00 am, he was sitting on top of the trunk of a black Honda Civic parked on the north west corner of the intersection, talking with his roommate § 87(2)(b). A marked police van passed by with five uniformed police officers in it: SGT Zweben, identified by this investigation and described as a white male, in his late 40's, 5'8"-5'10" tall, chubby, and bald, was sitting in the front passenger seat; PO Saraceno identified by this investigation and described as a white male, 5'4" tall, 160 lbs, bald, and in his 20's, was sitting behind the front passenger seat; PO Burpoe, identified by this investigation and described as a white male, 6'0" tall, 200lbs, large build, in his late 20's, with blond hair, was the driver of the van; and SGT Silverstein, identified by this investigation and described as a white male, in his 20's, was sitting in on of the back seats. PO5, who could not be identified by this investigation, was also in the back seat of the van, and was described as a white male, 5'8" tall, 170lbs, with an athletic build, blond hair, and roughly 25-26 years old

The van stopped, and SGT Zweben asked § 87(2)(b) if the car he was sitting on was his, and he responded that it was not. SGT Zweben then asked § 87(2)(b) if he would like it if

someone sat on his car, to which he responded that he did not have one. He then got off the car, and the van drove away. § 87(2)(b) then leaned back against the car, with only one hand touching it. Less than ten minutes later, the van returned. The officers got out of the car and approached § 87(2)(b). PO Saraceno then told him to turn around, which he did, and handcuffed him. The officers put § 87(2)(b) in the back of the police van, and SGT Zweben told him, "Don't worry, we're going to give you a nice seat to rest all night."

SGT Zweben then checked the car § 87(2)(b) had been sitting on, along with several of the other officers. SGT Zweben said, "You fucking scratched the car you fucking asshole." § 87(2)(b) responded that it was not his fault, and SGT Zweben told him, "Shut the fuck up." In his Notice of Claim, § 87(2)(b) stated that the following people were present at this time: § 87(2)(b) and three individuals named § 87(2)(b) and § 87(2)(b) was taken to the 34th Precinct stationhouse. He never learned what he had been charged with.

§ 87(2)(b) later heard from people in his neighborhood (namely § 87(2)(b) and § 87(2)(b) that after he was taken to the stationhouse a man came by the corner, saying that he was the owner of the black Honda Civic and that he had received a note from the police telling him that someone had vandalized his car.

Witness: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b). At the time of the incident he was § 87(2)(b).

CCRB Statement:

On August 30, 2012, § 87(2)(b) was called by the CCRB and provided a phone statement (encl. B 7). § 87(2)(b)'s statement was consistent with § 87(2)(b)'s with the following exceptions and additions:

§ 87(2)(b) stated that he briefly left the scene of the incident while it was occurring, after § 87(2)(b) was handcuffed, and returned right before he was placed in the police van and taken away. § 87(2)(b) did not state that he heard any discourteous remarks during the incident. He further stated that there were only four officers involved.

Despite numerous efforts to schedule § 87(2)(b) for an interview, § 87(2)(b) never provided the CCRB with a verified statement in relation to this complaint. When he provided the CCRB with a phone statement, § 87(2)(b) was scheduled for an interview on September 18, 2012. § 87(2)(b) missed this appointment without providing any advanced notice, and a missed appointment letter was sent to him the same day. § 87(2)(b) was then called on September 24, 2012, at the number he provided for himself during his phone statement, and was found to be no longer reachable at that number.

Witness: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b).

CCRB Statement:

On May 29, 2013, § 87(2)(b) called the CCRB and provided a phone statement (B 8).

At the beginning of her phone statement, § 87(2)(b) could not recall the incident in question. After being informed of the incident location, date, time, and the fact that it involved an individual being arrested for sitting on a car, § 87(2)(b) gave a statement about the incident. Her statement is consistent with § 87(2)(b)s with the following exceptions and additions:

§ 87(2)(b) could not recall how many officer got out of the car, but stated it was more than two. One of the officers was black and the rest were white, and they were all in uniform. § 87(2)(b) could not further describe these officers.

Some of these officers got into a verbal dispute with § 87(2)(b) could not recall what was said. § 87(2)(b) stated that she heard profanity at some point during the incident, but could not recall who said it or what exactly was said. While this was happening, there were around three other individuals in the area. One of them was called “§ 87(2)(b)” but it was not his name. § 87(2)(b) did not know who the other two individuals were, and had no contact information for anyone there.

Attempts to contact civilians:

When § 87(2)(b)s Notice of Claim was received on § 87(2)(b), it listed § 87(2)(b) and three individuals named § 87(2)(b) and § 87(2)(b) as additional witnesses. § 87(2)(b) was called for further information about these individuals, and he stated that the full name of § 87(2)(b) as § 87(2)(b) and also provided the address of his business. He could not provide any further information for any on these individuals.

On May 7, 2013, a Lexis Nexis search provided two possible addresses for § 87(2)(b) and one for § 87(2)(b). The search provided no results for any of the other individuals. Two letters were sent to these addresses on May 7, 2013, and May 15, 2013. On May 21, 2013, the first “Please call” letter sent to § 87(2)(b) at one of his addresses was returned as undeliverable by USPS. As of May 31, 2013, none of the other letters have been returned by USPS as undeliverable. On May 31, 2013, a search of the department of correction showed that none of the above referenced individuals are currently incarcerated. As of May 31, 2013, the undersigned investigator has not been contacted by § 87(2)(b) or § 87(2)(b).

NYPD Statement(s):

Subject Officer: SGT HOWARD ZWEBEN

- *SGT Zweben is a § 87(2)(b).*
- *On July 1, 2012, SGT Zweben worked from 5:45 pm, on the previous day, to 2:42 am, and was assigned to Operation Impact as a supervisor. He worked in uniform, and was partnered with PO Saraceno. He was assigned to motor vehicle number 5935, a marked van.*

Memo Book

SGT Zweben has the following entries in his memo book regarding this incident, they are marked on the fly sheets: At 12:51am, PO Saraceno arrested § 87(2)(b) (DOB: § 87(2)(b), address: § 87(2)(b), NY, NY 10043) § 87(2)(b), § 87(2)(a) 160.50

CCRB Statement:

On March 11, 2013, SGT Zweben was interviewed at the CCRB (encl. C 5-6).

On July 1, 2012, at approximately 1:00am, SGT Zweben was on patrol with PO Saraceno, SGT Silverstein, and PO Burpoe, when he passed by the intersection of Audubon Avenue and West 186th Street, in Manhattan. They were driving in a marked police van. SGT Zweben stated that there was a shortage of vehicles in their precinct, which is why there was another sergeant with him in the same vehicle. SGT Zweben could not recall where everyone was sitting in the car, but stated that he was not driving.

SGT Zweben observed a man, § 87(2)(b) sitting on the trunk of a car. SGT Zweben could not recall if he was with anyone at the time, but stated he did not appear to be doing anything. They slowed down, and SGT Zweben asked him from the car, "Is that your car?" § 87(2)(b) responded it was not. SGT Zweben then asked, "Would you like it if someone was sitting on your car?" § 87(2)(b) just said, "Ok," and got off the car. He then started to walk away.

SGT Zweben stated that he asked § 87(2)(b) if it was his car because, if it was not his car, then he could have been damaging it, which is a crime. He noted that if the car was someone else's property and got damaged, then the crime would have to be reported, which would occupy police officers who could have been preventing more important crimes.

SGT Zweben and the other officers drove off, and circled around the block back to the intersection of Audubon Avenue and West 186th Street. He was not sure exactly how much time passed between leaving the scene and returning to it, but stated it was less than ten minutes. He stated that they returned to the corner just as part of regular patrol, not specifically to check on § 87(2)(b). When they returned to the corner, § 87(2)(b) had come back to the car, and was leaning on it. All four officers got out of the van, and approached § 87(2)(b).

SGT Zweben could not recall which officers spoke with § 87(2)(b) or what role each one played in the interaction. He stated that he probably told § 87(2)(b) that he had told him to get off of the car and he had not. When they got to the car, SGT Zweben noticed scratches on the trunk, right where § 87(2)(b) had been sitting, and then noticed that § 87(2)(b) had a lot of rhinestones on his pants. SGT Zweben could not recall what these looked like. He could not recall if any other officers noticed them, or if there was any discussion about them.

At some point, one of the officers asked for § 87(2)(b)'s identification, and he provided it. SGT Zweben could not recall which officer did this. After observing the scratches on the car and § 87(2)(b)'s jeans, the decision was made to arrest § 87(2)(b). SGT Zweben could not recall whose decision it was, but stated that he probably discussed it with SGT Silverstein and they made it together. § 87(2)(b) was told he was under arrest, then placed in handcuffs, and put into the police van. He was compliant throughout his arrest. At no point during the incident did a crowd ever gather around them.

SGT Zweben never used any profanity during his interaction with § 87(2)(b) nor did he hear any other officer do so. He did not say to § 87(2)(b) "You scratched the fucking car you fucking asshole," or tell him to, "Shut the fuck up." He did not hear any other officer make either of these statements.

Before they left the scene, a note was placed on the car to try and get in contact with the owner, so that he could be informed how his car was damaged. SGT Zweben never received any response to this note.

Witness Officer: PO LANCE SARACENO

- *PO Lance Saraceno is a § 87(2)(b) [REDACTED].*
- *On July 1, 2012, PO Saraceno worked from 6:00 pm on the previous day, to 2:35 am, and he was assigned to impact in the 34th Precinct. He was in uniform and partnered with SGT Zweben. He was assigned to motor vehicle number 5935, a marked twelve seater van.*

§ 87(2)(b), § 87(2)(a) 160.50 [REDACTED]

Memo Book:

PO Saraceno has the following entry in his memo book regarding this incident: At 12:51am, § 87(2)(b) (DOB § 87(2)(b), address: § 87(2)(b) NY, NY 10033) was § 87(2)(a) 160.50 (encl. C 7-9).

CCRB Statement:

On February 12, 2013, PO Lance Saraceno was interviewed at the CCRB (encl. C 13-14). His statement was consistent with SGT Zweben's with the following exceptions and additions:

During his interview, PO Saraceno was asked to explain why he stated that § 87(2)(b) was arrested for § 87(2)(a) 160.50. He stated that § 87(2)(b) had committed criminal mischief when he damaged another person's car, and had committed disorderly conduct when he failed to obey a lawful order to disperse. When asked to explain what this lawful order to disperse was, he stated that it was when they told § 87(2)(b) to get off the car.

At no point did PO Saraceno ever say to § 87(2)(b) "You scratched the car you fucking asshole," or tell him to, "Shut the fuck up." At no point did PO Saraceno ever hear another officer make either of these statements.

Witness Officer: SGT STEVEN SILVERSTEIN

- *SGT Silverstein is a § 87(2)(b) [REDACTED].*
- *On July 1, 2012, SGT Silverstein worked from 5:45 pm (on June 30, 2012), to 2:42 am. He worked in uniform, as the Impact Sergeant, and was partnered with PO Burpoe. He was assigned to vehicle number 8528, a marked van.*

Memo Book:

SGT Silverstein had the following entry in his memo book regarding this incident, marked on a fly sheet: At 12:51am, one individual was arrested by PO Saraceno at West 186th Street and Audubon (encl. C 15-18).

CCRB Statement:

On April 4, 2013, SGT Silverstein was interviewed at the CCRB (encl. C 19-20).

SGT Silverstein stated that he was not present for the arrest of § 87(2)(b) and had no knowledge of the circumstances surrounding it. He stated that he did note the arrest in his memo book, but only after reading it in the command log afterwards. He explained that, as a Sergeant Supervisor, it is his responsibility to know where all the officers under his supervision are, and so he notes all arrests they make as a record of their activities. He does this even for arrests he is not involved in or present for. He never spoke with anyone regarding the arrest, and only knew about it from the command log entry.

He stated that, on July 1, 2012, at approximately 1:00am, he was most likely out on patrol or doing administrative work at the stationhouse.

Witness Officer: PO JAMES BURPOE

- *PO James Burpoe is a § 87(2)(b).*
- *On July 1, 2012, PO Burpoe worked from 6:00 pm on the previous day, to 2:35 am, and he was assigned to impact in the 34th Precinct. He was in uniform and partnered with SGT Silverstein. He was assigned to motor vehicle number 5935, a marked twelve seater van.*

Memo Book:

PO Burpoe has the following entries in his memo book regarding this incident: At 12:51am, § 87(2)(b) was arrested at § 87(2)(a) 160.50 by PO Saraceno. They were in van number 5935 (encl. C 21-23).

CCRB Statement:

On March 12, 2013, PO Burpoe was interviewed at the CCRB (encl. C 24-25).

PO Burpoe had no independent recollection of the incident in question. He stated that, during the incident, he was the Sergeant's Operator, and would have been driving the van with SGT Silverstein. He stated that the responsibilities of this assignment include noting arrests made by other officers in the van, and so PO Saraceno was most likely with him at the time. He could not recall what other officers he was with at the time, and could not recall if SGT Zweben was present. He could not recall anyone being arrested for sitting on a car and causing scratches to it. He could not recall any officers using profane language during the incident, and could not recall any officer telling § 87(2)(b) to, "Shut the fuck up," or saying, "You scratched the fucking car you fucking asshole."

Other Evidence:

§ 87(2)(b), § 87(2)(g), § 87(2)(a) 160.50
[REDACTED]
[REDACTED]

§ 87(2)(b), § 87(2)(g)

§ 87(2)(a) 160.50

Status of Civil Proceedings

- § 87(2)(b) filed a Notice of Claim with the City of New York on § 87(2)(b), claiming false arrest, unlawful imprisonment, negligent performance of duties, violation of his constitutional rights, as well as negligent and intentional infliction of emotional distress. He is seeking an unknown sum as redress (encl. E 5-8).

§ 87(2)(b)

§ 87(2)(b)

Subject Officer(s) CCRB History

- SGT Howard Zweben has been a member of the service for nine years and there are three substantiated CCRB allegations against him. (encl. A 1).
 - In case number 200816489, SGT Zweben was found to have stopped and frisked an individual without justification. The Board recommended a command discipline, and he was given a command discipline by the NYPD.
 - In case number 200914027, SGT Zweben was found to have stopped an individual without justification. The Board recommended a command discipline, and no disciplinary action was taken by the NYPD with regards to this allegation.

Conclusion

Identification of Subject Officer(s)

§ 87(2)(b) stated that the officer in the front passenger seat, who he described as a white male, in his late 40's, 5'8"-5'10" tall, chubby, and bald, was the one who first spoke to him when the van first passed the incident location. He stated that this was the same officer that used discourteous language, while he was checking the car that § 87(2)(b) had been sitting on. PO Saraceno stated that either SGT Zweben or SGT Sivertein was in the front passenger seat of the van, and

that it was this officer that first spoke to § 87(2)(b) SGT Zweben could not recall where inside the van he was sitting, but stated that he was the officer that first spoke to § 87(2)(b) and told him to get off the car. He further stated that he went to check the car and observed the scratches after they came around the second time. Additionally, SGT Zweben fits the general description that § 87(2)(b) gave of the subject officer, in that he is a white male, 5'8" tall, of large build, and balding. Although he is not in his 40's, he was one of the older officers present during the incident.

Investigative Findings and Recommendations

Allegation A – Discourtesy: SGT Zweben spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated that SGT Zweben said to him, "You scratched the fucking car you fucking asshole," after he checked the car that § 87(2)(b) had been sitting on, and told him to, "Shut the fuck up," when he responded that he did not. § 87(2)(b) who did not provide a verified statement to the CCRB, did not mention hearing any discourteous language during the incident, though he was not present for part of it. § 87(2)(b) stated that she might have heard profanity during the incident, but could not recall what or from who in particular.

SGT Zweben stated that he never made any profane statements to § 87(2)(b) and that he did not hear any other officer do so. PO Saraceno also stated that he never heard any officer speak discourteously to § 87(2)(b). None of the other officers interviewed during this investigation had an independent recollection of the incident.

§ 87(2)(b), § 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date